

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RANARD MASSEY, JR.,

Defendant-Appellant.

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UNPUBLISHED

September 30, 2003

No. 237775

Wayne Circuit Court

LC No. 00-010602

Before: Owens, P.J. and Griffin and Schuette, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree murder, MCL 750.317, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to consecutive prison terms of twenty to forty-five years for the murder conviction and two years for the felony-firearm conviction. He appeals as of right. We affirm.

**I. FACTS**

Defendant's convictions arise from the shooting death of Waymon Jackson, Jr., who was shot while in his backyard. Several neighbors identified the shooter as Justin Perryman, who was the victim's stepson or godson and had cut the victim's grass. Three other young men were observed running from the yard after the shooting, and a witness provided general descriptions of the young men. Shortly after the shooting, the police went to arrest Perryman at his home. Defendant was with him. Noting that defendant matched the general description of one of the individuals seen running from the yard, and having been advised that defendant was with Perryman all day, the police arrested defendant along with Perryman.

Perryman later pleaded guilty to second-degree murder and felony-firearm and, in exchange for a three-year reduction of his thirty-year minimum sentence and a letter in his prison file detailing his cooperation, he agreed to testify against defendant at defendant's trial. The gist of Perryman's testimony was that he and defendant waited for the victim to return home and ambushed him in his backyard. Perryman acknowledged doing most of the shooting, but claimed that he also placed the gun in defendant's hands and that defendant fired the gun in the victim's direction a few times.

**II. ADMISSIBILITY OF CUSTODIAL STATEMENTS**

Defendant presents several challenges to the admission of his two custodial statements, which he made on the night of the shooting after his arrest. In the statements, defendant acknowledged accompanying Perryman to the victim's house. He admitted intending to rob him, but denied firing any shots. In the second statement, defendant admitted taking the victim's wallet after he had been shot.

Defendant first argues that the statements were inadmissible because they were obtained after an illegal arrest, one not supported by probable cause.

A confession, even if voluntary, may be excluded from trial if it resulted from a custodial interrogation that followed an illegal arrest and if intervening events did not serve to break the causal connection between the illegal arrest and the confession. *Taylor v Alabama*, 457 US 687, 690; 102 S Ct 2664; 73 L Ed 2d 314 (1982).

A police officer may arrest an individual without a warrant if a felony has been committed and the officer has probable cause to believe that the individual committed the felony. MCL 764.15(c); *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996); *People v Kelly*, 231 Mich App 627, 631; 588 NW2d 480 (1998). When reviewing a challenged finding of probable cause, an appellate court must determine whether the facts available to the arresting officer at the moment of arrest would justify a fair-minded person of average intelligence in believing that the suspected individual had committed the felony. *People v Oliver*, 417 Mich 366, 374; 338 NW2d 167 (1983); *Kelly*, *supra* at 631.

Following an evidentiary hearing, the trial court determined that the police had reasonably trustworthy information sufficient to warrant a prudent person to believe that defendant was involved in the victim's shooting death and, therefore, had probable cause to arrest defendant. We agree.

Witnesses identified Perryman as the person who shot the victim. When the police went to Perryman's home within a few hours after the shooting, they discovered that he was with defendant, who matched a general description of the other individuals who had been seen running from the shooting scene. Further, Perryman's sister and mother both indicated that defendant had been with Perryman all day long and was likely involved in whatever Perryman had done. These facts were sufficient to allow a fair-minded person of average intelligence in believing that defendant was involved along with Perryman in the victim's shooting death. *Oliver*, *supra* at 374; *Kelly*, *supra* at 631. Thus, there was probable cause supporting defendant's arrest.

Defendant next argues that the prosecution failed to establish that his statements were voluntarily, knowingly, and intelligently made. Defendant maintains that his custodial statements should have been suppressed because he was only sixteen years old, had no prior contact with the criminal justice system, was still under the influence of alcohol and drugs ingested an hour before the interrogation, had a history of emotional problems, and was in a coercive environment. Moreover, his father's request for an attorney was denied. Defendant also maintains that the police erred in not immediately bringing him before the family division of

the circuit court because he was a juvenile. The trial court denied defendant's motion to suppress following a *Walker*<sup>1</sup> hearing.

Statements of an accused made during custodial interrogation are inadmissible unless the accused voluntarily, knowingly, and intelligently waived his Fifth Amendment rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966); *People v Abraham*, 234 Mich App 640, 644; 599 NW2d 736 (1999). Whether a statement was voluntarily made is determined solely by examining police conduct for an absence of coercion. *People v Daoud*, 462 Mich 621, 635; 614 NW2d 152 (2000); *People v Howard*, 226 Mich App 528, 538; 575 NW2d 16 (1997). The relinquishment of the suspect's constitutional rights must have been voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception. *Daoud, supra* at 635. Whether a suspect knowingly and intelligently waived his rights "requires an inquiry into the suspect's level of understanding, irrespective of police behavior." *Id.* at 636. When the suspect is a juvenile, factors to consider include: (1) whether the juvenile was informed of his constitutional rights; (2) the degree of police compliance with the statutory requirements found in MCL 764.27 and pertinent court rules; (3) the presence of an adult parent, custodian or guardian; (4) the juvenile's personal background; (5) the juvenile's age; education, and intelligence level; (6) the extent of the defendant's prior experience with the police; (7) the length of the detention before the statement was made; (8) the repeated and prolonged nature of the questioning; and (9) whether the accused was injured, intoxicated, in ill health, physically abused or threatened with abuse, or deprived of food, sleep, or medical attention. *People v Givans*, 227 Mich App 113, 121; 575 NW2d 84 (1997).

In the present case, the trial court did not record its factual findings regarding whether defendant voluntarily, knowingly, and intelligently waived his constitutional rights when making his custodial statements. However, implicit in the court's denial of defendant's motion to suppress is the court's finding that the police conduct was not coercive. We review the court's findings for clear error. *Daoud, supra* at 629.

The only evidence of police coercion was the testimony of defendant's father, Ranard Massey, Sr., who testified that Investigator Dwight Pearson lied when he told him that defendant was not under arrest and that Massey could take defendant home after Pearson asked him a few questions. Massey also stated that he asked for an attorney, and Pearson responded that he did not care if defendant had an attorney, just as defendant did not care about the victim. According to Massey, Pearson threatened that, if Massey and defendant did not sign a statement, Pearson would send defendant to the county jail where he was in danger of being raped.

Massey's testimony was contradicted by the testimony of Investigator Pearson, who testified that defendant's father was present the entire time, that defendant was willing to give a statement, that defendant had completed the eighth grade and appeared to understand his rights, and that Pearson did not threaten either defendant or his father, use any force, or make any promises to either one. Similarly, Investigator Derryck Thomas testified that defendant's father

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<sup>1</sup> *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

was present throughout the two-hour second interrogation, and that Thomas did not promise anything to either defendant or his father or threaten either of them.

In reviewing this issue, we give due regard to the trial court's special opportunity to judge the credibility of the witnesses who appeared before it. MCR 2.613(C). Resolution of facts about which there is conflicting testimony is a decision for the trial court. *People v Shields*, 200 Mich App 554, 558; 504 NW2d 711 (1993). The question of police coercion turns on the resolution of the conflicting accounts of the circumstances surrounding the police questioning, and, giving deference to the trial court's superior opportunity to determine the credibility of the witnesses who appeared before it, we find no clear error in the trial court's implicit determination that there was no police coercion associated with defendant's statements.

With regard to whether the waiver of defendant's constitutional rights was knowing and intelligent, the testimony by the defense witnesses was that defendant had been drinking and smoking marijuana just before and after the shooting. The parties stipulated that defendant's urine tested positive for the presence of marijuana on the day after he was arrested, but also that a person can test positive for marijuana for up to thirty days after it is ingested. No testimony was presented regarding defendant's alleged history of emotional problems. In contrast to the testimony of the defense witnesses, Investigator Pearson testified that defendant appeared to understand his rights, did not have difficulty reading aloud his rights, and did not appear to be intoxicated or under the influence of narcotic substances. Pearson did not smell any alcohol on defendant. Similarly, Investigator Thomas testified that defendant did not appear to be intoxicated or under the influence of narcotic substances and made appropriate responses to the questions that Thomas asked him. Defendant was able to provide background information concerning himself.

Forensic psychologist Anthony Kealing testified that defendant told him that he had started smoking marijuana early on the day of the shooting and continued throughout the day. He also drank wine and cognac. According to Kealing, however, defendant, who had the physical stature of an adult male and had smoked large amounts of marijuana daily for years, would be able to function after the amount of marijuana he smoked that day. Kealing also opined that defendant demonstrated sufficient reading and intellectual strengths to both read and understand his rights.

Given this conflicting testimony about defendant's condition on both the day of the shooting and during his custodial statements, we will not substitute our judgment for that of the trial court, which had a superior opportunity to evaluate the credibility of the witnesses. Therefore, we conclude that the trial court did not clearly err in implicitly determining that defendant knowingly and intelligently waived his constitutional rights.

Defendant also argues that suppression of his statements was required because the arresting and interrogating officers failed to comply with applicable statutes and court rules that required them to take him, a sixteen-year-old murder suspect, before the family division of the circuit court. Pursuant to MCL 764.27, if a child less than seventeen years of age is arrested, the child "shall be taken immediately before the family division of the circuit court of the county where the offense is alleged to have been committed, and the officer making the arrest shall immediately make and file, or cause to be made and filed, a petition against the child." Similarly, former MCR 5.934, now MCR 3.934, required that, unless the prosecutor has

authorized a complaint and warrant charging a juvenile with an offense as though an adult, an arresting officer is required to take the juvenile immediately before the family division of the circuit court for a preliminary hearing.

Here, it appears that the arresting officers did not comply with either the statute or court rule, and instead took defendant directly to the homicide section of police headquarters where he was held and questioned. However, failure to follow this procedure “does not automatically require suppression of an incriminating statement obtained as a result of that misconduct.” *People v Good*, 186 Mich App 180, 188; 463 NW2d 213 (1990). Rather, such a failure should be considered as one part of the totality of the circumstances in determining whether the defendant’s statement was voluntary. *Id.* at 187-188. In *People v Brooks*, 184 Mich App 793; 459 NW2d 313 (1990), this Court determined that the Legislature intended that juveniles charged as adult offenders pursuant to MCL 600.606<sup>2</sup> fall outside the jurisdiction of the juvenile court, and the mandatory provisions of MCL 764.27 therefore do not apply. *Id.* at 797-798.

In the present case, the interrogating officers ensured that defendant’s father was present during both custodial interrogations and had both defendant and his father sign the constitutional rights form and resulting statements. At the *Walker* hearing, there was evidence that defendant clearly understood and waived his rights. Under the totality of the circumstances, any violation of MCL 764.27 and the applicable court rule do not require suppression of defendant’s custodial statements.

### III. PROSECUTORIAL CONDUCT

Next, defendant contends that the prosecutor committed misconduct during closing argument by (1) vouching for prosecution witnesses and evidence, (2) improperly commenting on Perryman’s guilty plea conviction to show defendant’s guilt, and (3) mischaracterizing the law on accomplice testimony. Defendant did not object to the alleged misconduct at trial; thus, the issue is not preserved. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994); *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003). Therefore, we review this issue for plain error affecting defendant’s substantial rights. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000). Reversal is warranted only where a plain, unpreserved error resulted in the conviction of an actually innocent person or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Schutte*, *supra* at 720, citing *People v Carines*, 460 Mich 750, 761-762; 597 NW2d 130 (1999). Error requiring reversal will not be found if the prejudicial effect of the prosecutor’s comments could have been cured by a timely instruction from the court. *Schutte*, *supra* at 721.

Defendant alleges that the prosecutor vouched for the truthfulness of the testimony of Investigator Thomas and improperly commented on Thomas’ integrity and the procedure he uses to obtain accurate statements from witnesses. Although the prosecutor was attempting to bolster

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<sup>2</sup> MCL 600.606 grants jurisdiction to circuit courts to hear and determine violations committed by juveniles between the ages of fourteen and sixteen of certain enumerated felonies, including murder and felony-firearm.

Thomas' credibility, he did not imply that he had some special knowledge about the truthfulness of Thomas' testimony. Further, in one of the challenged remarks, the prosecutor commented on the testimony of defense witness Jamealah Anding regarding Thomas' methods in taking her statement at the crime scene and the accuracy of his recording of her statement. In this instance, it was not improper for the prosecutor to argue that a reasonable inference to be drawn from Anding's testimony was that Thomas also followed correct procedure when he interrogated defendant and accurately recorded defendant's statement. Therefore, plain error did not occur.

Defendant next argues that the prosecutor impermissibly interfered with the jury's factfinding role by identifying whose version of events—defendant's or Justin Perryman's—was truthful and by arguing facts not in evidence. Defendant challenges the prosecutor's characterization of Perryman as being believable because he pleaded guilty and received little, a three-year reduction of his thirty-year minimum sentence, in exchange for his testimony. However, as with the challenged statements regarding the testimony of Investigator Thomas, the prosecutor did not imply some special knowledge regarding the truthfulness of Perryman's testimony. *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995); *People v Knapp*, 244 Mich App 361, 382; 624 NW2d 227 (2001). The challenged remarks regarding the letter to be placed in Perryman's prison file were made to rebut defense counsel's closing argument, in which he attempted to portray Perryman as the sole killer. In reference to Perryman's plea agreement and imagined discussions about the agreement, defense counsel specifically mentioned the letter to be written by the prosecutor's office and placed in Perryman's prison file. The prosecutor's remarks about the letter were responsive to defense counsel's arguments regarding the truthfulness of Perryman's trial testimony and his motivations for lying about defendant's role in the shooting. Considered in this context, see *People v Knowles*, 256 Mich App 53, 61; 662 NW2d 824 (2003), no plain error occurred.

Next, defendant contends that the prosecutor committed misconduct by improperly commenting on Perryman's guilty plea conviction to show defendant's guilt. Generally, evidence of the conviction of an accomplice is inadmissible at a defendant's trial for the purpose of suggesting the defendant's guilt. *People v Taylor*, \_\_\_ Mich App \_\_\_, \_\_\_ NW2d \_\_\_ (2003), citing *People v Kincade*, 162 Mich App 80, 84-85; 412 NW2d 252 (1987). However, the guilty plea of a testifying accomplice is admissible for purposes of impeachment or rehabilitation of the accomplice as a witness. *Taylor, supra* at \_\_\_, citing *People v Manning*, 434 Mich 1, 14 (Boyle, J), 21 (Brickley, J); 450 NW2d 534 (1990).

In this case, the fact of Perryman's guilty plea and the terms of his plea agreement were properly presented to the jury to assist it in evaluating the credibility of his testimony. Although the prosecutor elicited the details of the plea agreement in direct testimony, those details certainly would have come out on cross-examination to impeach Perryman's testimony had the prosecutor not done so. Because this impeachment evidence was properly before the jury, it was not plain error for the prosecutor to summarize the plea agreement during his closing argument.

Finally, defendant argues that the prosecutor mischaracterized the law on accomplice testimony. A prosecutor's clear misstatement of the law that remains uncorrected may deprive a defendant of a fair trial. *People v Grayer*, 252 Mich App 349, 357; 651 NW2d 818 (2002). However, if the jury is correctly instructed on the law, an erroneous legal argument made by the prosecutor can potentially be cured. *Id.* Here, the prosecutor informed the jury, "The Judge will tell you about accomplice testimony. He will tell you that it's treated differently than normal

witness testimony, that you should look at it a little closer.” The prosecutor’s remark is not an incorrect statement of the law and, therefore, no plain error occurred. Moreover, the trial court correctly instructed the jury on how to consider the testimony of defendant’s accomplice, Justin Perryman.

Affirmed.

/s/ Donald S. Owens

/s/ Richard Allen Griffin

/s/ Bill Schuette